

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

J U D G M E N T

D.B.CRIMINAL APPEAL NO.1052/2002
(Kishan Lal @ Krishan Lal vs. State of Rajasthan)

D.B.CRIMINAL APPEAL UNDER SECTION 374 CR.P.C.
AGAINST THE JUDGMENT & ORDER DATED
12.7.2002 PASSED BY THE SPECIAL JUDGE, WOMEN
ATROCITIES CASES, SRI GANGANAGAR IN
SESSIONS CASE NO.11/1999.

DATE OF JUDGMENT:

18th APRIL, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.Sanjeev Sharma, for the appellant
Mr.Vishnu Kachhawaha, Public Prosecutor

BY THE COURT(PER HON'BLE MR.MATHUR J.)

REPORTABLE/-

1. The appellant Kishan Lal @ Krishan Lal was sent up for trial on the charge of uxoricide. The learned Additional Sessions Judge, Sri Ganganagar by the impugned judgment dated 12.7.2002 having found him guilty of perpetrate act of offence under Section 302 I.P.C. sentenced to imprisonment for life and to pay a fine of Rs.10,000/-; in default of payment to further undergo two years rigorous imprisonment.

2. The factual scenario as emerged during the trial is that the appellant Kishan Lal was married to deceased Anupama a deaf and dumb in December, 1993. The couple shifted to Hanumangarh two years back from the date of incident from Sirsa and established a pathological laboratory in the house of P.W.5 Dr.Gyan Prakash. The appellant had also installed a X-Ray Machine in the partnership of Dr.Vinod Kumar Thakar. The parents of the deceased Anupama lived in village Gandhi Badi, Tehsil, Bhadra. She used to visit her maternal uncle P.W.2 Mohan Lal in Village 5 E Chhoti, a place near to Hanumangarh Junction. On 10.10.98 at about 9:00 A.M. P.W.2 Mohan Lal submitted a written report Ex.P1 at Police Station, Sadar Sri Ganganagar stating inter alia that on 4.10.98 the appellant visited his house in Agarsen Nagar at Hanumangarh Junction and requested to bring Anupama as he will be visiting Bikaner for 4-5 days. Accordingly he brought his niece Anupama to Hanumangarh Junction from 5 E Chhoti. On the same day in the evening the appellant Kishan Lal also visited his house. On the next morning i.e. on 5.10.98 he left the house at about 7 A.M. for Bikaner stating that he would be returning on 8th or 9th October, 1998 for collecting Anupama. On 9.10.98 in the afternoon at about 4-5 P.M. the appellant arrived. At about 8:00 P.M. he dined along with appellant Kishan Lal and other members of the family. He made arrangement for the night stay

of appellant Kishan Lal along with Anumpama in his Bed Room. He along with his wife went to sleep on the terrace. About 15-20 minutes attracted the shouting of appellant Kishan Lal to Bed Room. All the members of the family, which included his mother, wife and the children assembled in the bed room, where Anupama was sleeping. The condition of Anupama was serious. Froth was coming out from her mouth and she was feeling dizziness. Kishan Lal left the place on the pretext of arranging vehicle. After his departure deceased Anupama communicated by sign to the effect that appellant had administered injection to her. The appellant Kishan Lal did not return and fled away. It was also stated that the appellant Kishan Lal was employed as technician in the private clinic of P.W.5 Dr.Gyan Singh. Anupama was rushed to the hospital, where she was declared dead. Police registered a case for offence under Section 302 and 325 I.P.C. and proceeded with investigation. After usual investigation police laid charge-sheet against the appellant for offence under Section 498A and 304B I.P.C. On being committed, the trial court framed charges against the appellant for offence under Section 498A & 304B I.P.C. and in alternate for offence under Section 302 I.P.C. The appellant pleaded not guilty and claimed trial.

3. As in absence of witness of the occurrence the prosecution sought to prove its case against the appellant relying

on the following piece of circumstances:-

- (1) The deceased was last lived in the company of the appellant.
- (2) The appellant alone had an opportunity and capability to inject poison in the body of the deceased which is the cause of her death.
- (3) Leaving the spot on the false pretext for arranging transport and absconded.
- (4) The communication of the deceased by sign of administering injection to her by the appellant.
- (5) Motive – to get rid of the deceased a deaf and dumb girl for contracting second marriage.

The prosecution in support of its case adduced oral and documentary evidence. The appellant in his statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against him. He pleaded innocence. He also stated that he has been falsely implicated at the instance of Mohan Lal. The trial court having found prosecution case proved held the appellant guilty of the charges levelled against him and as such convicted and sentenced in the manner stated above.

4. Assailing the conviction, it is contended by the

learned counsel for the appellant that there is no evidence of clinching nature to prove the guilt against the appellant. It is submitted that there is no averment in the FIR as to the motive. The case of dowry death has been developed later on. It is further submitted that the learned trial Judge has adopted a casual approach, which is evident from the fact that the deceased has been described as deaf, dumb and blind. The fact is that she was deaf and dumb but not blind. The doctor has not been able to say that poison was administered orally or injected. The learned counsel has also criticized the evidence of recovery. On the other hand the learned Public Prosecutor has supported the judgment of the trial court.

5. We have carefully scrutinized the evidence on record and considered the rival contentions. The law relating to circumstantial evidence has been settled by the Apex Court and this Court in numerous of decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be of conclusive nature and tendency and they should be such as not to prove every hypothesis but the one proposed to be proved. In other words there must be a chain of evidence far complete as not to leave any reasonable ground for a conclusion consistent

with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. Before we proceed to deal with the each circumstances referred to above, it would be convenient to briefly survey the prosecution evidence.

6. P.W.1 Mohani Devi is the maternal aunt (Mami) of the deceased. She deposed that the deceased Anupama was married with the appellant in the year 1993. After marriage she used to stay with her husband. Anupama was given huge dowry in marriage by her parents, which included a FD of Rs.50,000/-, Steel Utensils, furnitures etc. She gave birth to a female child after about three years of the marriage. On birth of the female child about Rs.15000 – 20000/- were given by the parents of Anupama to the appellant. The appellant used to harass Anupama for bringing more dowry. For some time he was raising demand of cash amount which he required for establishing a laboratory. He was also demanding money for the construction of the house. She was staying with her husband at Hanumangarh. She was brought to her house by her husband P.W.2 Mohan Lal. She was being followed by her husband Kishan Lal. On the date of the incident i.e. on 9th October, 1998 the appellant arrived at their house from Bikaner. After taking dinner Anupama and the appellant had gone to sleep in their bed room.

On hearing the cries of Kishan Lal, she rushed to the bed room. Anupama was feeling giddy. The appellant Kishan Lal went out for arranging a vehicle but, did not return. Anupama was taken to the hospital at Ganganagar in a car, where she was declared dead. She also stated that before arrival of the doctor Anupama communicated to her by sign that the appellant had administered injection to her with a view to kill her.

7. P.W.2 Mohan Lal is the maternal uncle of deceased Anupama. He has given details of her marriage in the year 1993 and delivery of huge dowry to the appellant. He also stated that Kishan Lal used to work as technician in the laboratory at Hanumangarh. He has also given the details as to the demand of dowry by the appellant. As to the actual incident he has reiterated the averments made in the First Information Report. He also stated that the parents of the deceased lived in the Village Gandhi Badi at Bhadra. She often used to visit him in Naiyon Wali (5 E Chhoti). She was healthy but deaf and dumb. She had studied upto 5th Standard. He has also given the details of the investigation.

8. P.W.3 Jagdish Prasad is the father of the deceased. He stated that deceased Anupama was married with the appellant on 9th December, 1993. She had studied upto 8th

Standard in Blind School as she was deaf and dumb since birth. However, she was sensible and used to undertake household work. He had spent more than Rs. 3 Lacs on her marriage. He has given the details of dowry given to the appellant. He also stated that the deceased used to make complaint of harassment by the appellant for not making the demand of dowry. Lastly the appellant was making a demand of Rs.80,000/- for purchasing X-Ray Machine at Hanumangarh. He had received an information about the death of Anupama on telephone from P.W.2 Mohan Lal. He has also given details of investigation.

9. P.W.4 Randhir Singh is a neighbor of P.W.3 Jagdish Prasad. He has stated that deceased Anupama used to communicate by sign. Whenever she visited her parents house she made complaint by sign as to the torture by her husband for not meeting the demand of dowry. He is also a motbir of poison from the possession of the appellant.

10. P.W.5 Dr.Gyan Singh was the Medical Officer in the Government Hospital at Hanumangarh. He stated that the appellant had taken underground premises on rent and established a Pathological Laboratory. He had also installed a X Ray Machine in partnership with Dr.Vinod Kumar Thakar. For last some months he was defaulter in payment of rent.

11. P.W.6 Damodar Lal Meena is the Incharge of Police Station, Sri Ganganagar. He has given the details of investigation. P.W.7 Diwan Chand, P.W.8 Jagmohan Meena and P.W.9 Tersem Lal are the police witnesses of link evidence. P.W.10 Dr.O.P. Sharma conducted autopsy of the deceased Anupama. P.W.11 Bhoop Singh is the uncle of deceased Anupama. His statement is almost in the line of statement of P.W.3 Jagdish Prasad. P.W.12 Rakesh Kumar is a motbir of various police memos. P.W.13 Bhopal Singh has given some details of the investigation as he was posted as ASI at Police Station, Sri Ganganagar at the relevant time. P.W.14 Biju George Joseph has also given details of the investigation as at the relevant time he was posted as Assistant Superintendent of Police at Sri Ganganagar.

12. As regards the first circumstance, the prosecution has examined P.W.1 Smt.Mohani Devi and P.W.2 Mohan Lal. It is stated by P.W.1 Mohani Devi that on 9th October, 1998 the appellant Kishan Lal visited their house in the afternoon at about 4-5 P.M. At that time deceased Anupama had gone to market. She returned about 6:00 P.M. Her husband P.W.2 Mohan Lal also returned from the shop late in the evening. Her husband Mohan Lal and appellant Kishan Lal took dinner together. The other

members of the family which included her mother-in-law, Anupama and other children also took dinner. After taking dinner all of them went to bed. Arrangement was made for the appellant Kishan Lal and deceased Anupama in their bed room. She along with her husband and the children went to terrace. The mother-in-law went into front room to sleep. She was watching TV. After about 15-20 minutes the cries of Kishan Lal from the bed room attracted them. Similar is the statement of P.W.2 Mohan Lal. He stated that deceased Anupama was his niece. He had brought her to his house from Hanumangarh Junction on the request of the appellant on 4.10.98. On 9.10.98 appellant Kishan Lal returned from Bikaner. The appellant and the deceased Anupama were lodged in their bed room. The cries of appellant Kishan Lal were heard from the bed room. Thus, the prosecution has established beyond doubt that the deceased Anupama last lived in the company of the appellant. It is further established that Anupama was perfectly healthy when she entered in the bed room. The shouting of appellant Kishan Lal attracted all the members of the family. They found she was emitting froth from the mouth. She was also feeling dizziness.

13. As regards the second circumstance, it is stated by P.W.5 Dr.Gyan Singh that the appellant used to run a Pathological Laboratory in his rented premises. P.W.2 Mohan Lal

has stated that the appellant was a technician. He had established a Pathological Laboratory. Thus, it is evident that the appellant Kishan Lal belongs to medical field, as such he could not only inject injection but also had knowledge about poisonous medicines. Thus, the appellant had not only an opportunity but also capability to inject poison in the body of the deceased.

14. The autopsy on the dead body of Anupama was conducted by the medical board vide Ex.P24. The medical board noted external appearance of the body as follows:

“Average built female. Rigor mortis present. PM lividity on descendant part of body. There were two needle pricked marks in the left cubital fore arm vein. Fresh in nature. Ante mortem bloody froth coming from mouth.”

In the opinion of the medical board the mode of death was asphyxia. The cause of death was to be given after receipt of chemical and test of pathological examination reports. The medical board preserved the viscera, which was sent to chemical and test of pathological to the Forensic Science Laboratory. On chemical examination vide Ex.P25 the viscera gave positive test for the presence of diazepam tranquillizing drug. The portion of viscera also gave positive test for organophosphorous insecticide. Thus, in the opinion of P.W.10

Dr.O.P.Sharma the cause of death of Anupama was consumption of Organophosphorous. He also stated that if Organophosphorous is given by injection, it may cause death. In the instant case the police seized the portion of the bed sheet containing the vomit vide Ex.P4 from the bed room. However, as per the FSL report Ex.P25 the said sample packed in packet C vide Ex.P4 was found negative for Organophosphorous insecticide. P.W.10 Dr.O.P.Sharma stated that on chemical examination of the vomit in an event of Organophosphorous taken orally will give positive test otherwise it would give negative test. He also stated that when poison is administered by injection, it is pressed in the entire body with the blood circulation and in that event on chemical examination of the viscera particularly the intestine and spleen, it will give positive test. In the instant case the portion of viscera at item No.1 to 7 i.e. stomach, intestine, liver, spleen, kidney, lung and brain has given positive test for Organophosphorous insecticide vide FSL report Ex.P25. It may also be stated that as per the postmortem report two needle pricked marks have been found in the cubital. Thus, there is ample evidence on record to show that Mst.Anupama died of administering poison of Organophosphorous by injecting in the veins.

15. The appellant was arrested by P.W.13 Bhopal Singh

S.I., Police Station, Sri Ganganagar on 27.11.98 vide Ex.P31. The investigation was transferred to P.W.14 Biju George Joseph, Assistant Superintendent of Police, Sri Ganganagar. In pursuance of the information given to him vide Ex.P32 one packet of Endosulfan insecticide was recovered from his laboratory. On 3.12.98 an injection syringe and empty glass vial was recovered vide Ex.P35 in pursuance of the information given by the appellant vide Ex.P34. It was stated that before throwing the needle and vial the same was washed. As per the FSL report Ex.P36 on chemical examination the portions found in both the articles were gave positive test for the presence of Endosulfan insecticide. This part of the recovery does not help the prosecution. Be that as it may, from the aforesaid discussion it clearly emerges that the appellant had an opportunity and capability to inject the poison. The deceased died of poisoning administered in her body by injection. Thus, the prosecution has succeeded in establishing the second circumstance by cogent evidence, which is of conclusive nature.

16. As regards the third circumstance, P.W.1 Mohani Devi and P.W.2 Mohan Lal stated that the shouting of the appellant attracted them to the bed room, where deceased Anupama was found in serious condition emitting foam from mouth. The appellant reported that she was feeling dizziness.

The appellant went out on the false pretext of arranging transport for taking Anupama to the hospital. However, he did not return and absconded until he was apprehended on 27.11.98. This circumstance positively points towards the guilt of the appellant.

17. As regards the fourth circumstance, P.W.1 Smt.Mohani Devi stated that after the death the appellant left the house for arranging transport and before the doctor arrived the deceased Anupama communicated to her by sign that her husband had administered poison by injection. There is a statement of P.W.2 Mohan Lal as well to the same effect. P.W.1 Smt.Mohani has admitted in the cross examination that deceased Anupama used to write letters but she used to communicate by sign which they were able to understand. P.W.3 Jagdish Prasad the father of the deceased also stated that deceased Anupama used to communicate by sign. It is a matter of common experience that deaf and mute person by birth live to maturity on being able to communicate with relatives by practical method of inter communication by signs.

18. As regards the last circumstance of motive, P.W.1 Smt.Mohani Devi the maternal aunt, P.W.2 Mohan Lal the maternal uncle, P.W.3 Jagdish Prasad the father, P.W.11 Bhoop

Singh the uncle of the deceased and P.W.4 Randhir Singh a neighbor have stated in terms as to the demand of dowry from time to time by the appellant. It was known to the appellant before marriage that the deceased was deaf and dumb. However, he married with her and collected huge dowry at the time of marriage. He has been making demand of more money on regular basis. In fact in pursuance of the information given by the appellant the huge articles, which includes ornaments were recovered vide Ex.P33. He had been making demand of money for establishing the laboratory and then implanting X Ray Machine. The currency notes have also been recovered from his possession. However, it is not necessary to deal with the entire evidence of dowry as the appellant has been acquitted of the charge under Section 304 B I.P.C. on the ground that there was no satisfactory evidence to the effect that soon before her death she was subjected to cruelty or harassment by the appellant in connection with any demand for dowry. However, this fact clearly shows that the appellant wanted to get rid of the deaf and dumb lady and wanted to go for the second marriage after collecting huge sum. Thus, the circumstance of motive is of great significance being of incriminating nature.

19. On consideration of the entire evidence, we are of the view that the prosecution has successfully proved each of the

circumstances referred to above, which are of conclusive nature and tendency and leads to irresistible conclusion that it could be none else than the appellant, who committed the murder of his wife by injecting poison in her body. The trial court has rightly held him guilty of the charge of murder of his wife.

20. Consequently, the appeal being devoid of merit stands dismissed. The appellant Kishan Lal @ Krishan Lal is in Jail. He will serve out the remaining part of the sentence.

(MANAK MOHTA) J.

(N.N.MATHUR) J.

BKS/-